

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HERBERT MANYGOAT,

Plaintiff,

v.

No. 20-cv-0790 JB-JHR

FNU BIRCHFIELD, *et al*,

Defendants.

**ORDER GRANTING *IN FORMA PAUPERIS*
RELIEF AND DENYING MOTION TO APPOINT COUNSEL**

This matter is before the Court on Plaintiff Herbert Manygoat's *pro se* Motion for Leave to Proceed *In Forma Pauperis* (Doc. 6). Also before the Court is his Motion to Appoint Counsel (Doc. 11). Plaintiff's financial information reflects he is unable to prepay the \$402 filing fee for this civil rights action. The Court will therefore grant the Motion. *See* 28 U.S.C. § 1915(a). Prisoners must generally make an initial partial payment equal to 20% of the greater of: "the[ir] average monthly deposits ...; or (B) the[ir] average monthly balance ... for the 6-month period immediately preceding the filing of the complaint..." 28 U.S.C. § 1915(b)(1). However, Plaintiff's financial statement reflects he had no income in the six months preceding this lawsuit and that his account balance is \$0.00. (Doc. 7 at 3). The Court will waive the initial partial payment, but Plaintiff is reminded that he remains obligated to pay the filing fee at a later time.

As to Plaintiff's remaining motion, "[c]ourts are not authorized to appoint counsel in § 1983 cases; instead, courts can only 'request' an attorney to take the case" on a *pro bono* basis. *Rachel v. Troutt*, 820 F.3d 390, 397 (10th Cir. 2016). The decision to make this request is a matter of discretion. *Toevs v. Reid*, 685 F.3d 903, 916 (10th Cir. 2012). Factors guiding the Court's decision include "the merits of the claims, the nature of the claims, [the inmate's] ability to present

the claims, and the complexity of the issues.” *Rachel*, 820 F.3d at 397. Considering these factors, the Court will not take the extraordinary step of asking a local attorney to represent Plaintiff on a *pro bono* basis. The claims are not particularly complex. Beyond citing his indigence and lack of legal knowledge - which unfortunately are factors in most *pro se* cases - Plaintiff has not demonstrated an inability to prosecute the action. The Court will therefore deny the Motion to Appoint Counsel (Doc. 11).

IT IS ORDERED that Plaintiff’s Motion for Leave to Proceed *In Forma Pauperis* (**Doc. 6**) is **GRANTED**; and the initial partial payment is **WAIVED**.

IT IS FURTHER ORDERED that Plaintiff’s Motion to Appoint Counsel (**Doc. 11**) is **DENIED**.


UNITED STATES MAGISTRATE JUDGE